



U.S. Department of Justice

Washington, D.C. 20530

BY FEDERAL EXPRESS

April 12, 1990

Mr. Warren Derbidge  
Assistant U. S. Attorney  
District of Idaho  
Federal Building, Room 328  
Mail Code: Box 037  
550 West Fort Street  
Boise, Idaho 83724

Re: U.S. v. Warren Bingham

Dear Warren:

As we discussed, I am sending you the Requests for Admissions and Documents which Region X Counsel Monica Kirk provided to me last week. I appreciate your serving this on Mr. Bingham's counsel shortly. It does not appear to need any additions (unless you have some additions), since Monica has done a very thorough job on this.

Thanks for your prompt attention to this. I know that Monica, Helen and I will appreciate receiving a copy of the final discovery set that you send out. We will also be looking forward to receiving Bingham's responses to the Interrogatories you sent out last month.

Sincerely,

*Harry H. Kelso*  
Harry H. Kelso

Land & Natural Resources Division  
U. S. Department of Justice  
10th and Pennsylvania Avenue, N.W.  
Room 2612  
Washington, D. C. 20530  
(202) 633-2763

cc: Monica Kirk, Esq. (w/o attachment)  
Helen Kennedy, Esq. (w/o attachment)

Attachment

USEPA RCRA



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U.S. Department of Justice

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United States Attorney  
District of Idaho

Federal Building, Box 037  
550 West Fort Street  
Boise, Idaho 83724

April 17, 1990

Mr. Raymond C. Givens  
Attorney at Law  
P.O. Box 969  
Coeur d'Alene, Idaho 83814

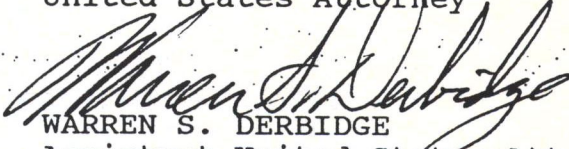
RE: United States v. Warren Bingham  
Civil No. 88-3011

Dear Mr. Givens:

Enclosed for your response within thirty days, please find a copy of "Plaintiff's First Request For Admissions And Documents", in regard to the above-captioned case.

Sincerely,

MAURICE O. ELLSWORTH  
United States Attorney

  
WARREN S. DERBIDGE  
Assistant United States Attorney

Enclosure

cc: Harry Kelso  
Department of Justice





1 following matters and produces requested documents within thirty  
2 (30) days after service of this Request for Admissions and  
3 Documents.

4 For each request which you have not admitted, state all  
5 facts which you contend support your refusal to admit the truth  
6 of the matter asserted therein, identify all persons having  
7 knowledge of such facts, and identify and produce all documents  
8 relating to or reflecting such facts.

9 For each document you have not admitted is authentic,  
10 state all the information you know about the document.

11 Please note that documents produced pursuant to this  
12 Request should be produced at the Office of the United States  
13 Attorney for the District of Idaho, Room 328, Federal Building,  
14 550 W. Fort Street, Boise, Idaho 83724.

15 PLEASE TAKE NOTICE that these Requests for Admissions and  
16 Documents are continuing and you should promptly supply by way of  
17 supplemental answers any and all additional responsive  
18 information or documents that may become known prior to trial in  
19 this action.

20  
21 INSTRUCTIONS

22 1. Whenever there is a request to identify a person, set  
23 forth:—

24 (a) if that person is an individual:  
25



(1) his or her full name;

(2) his or her present or last known home and business address and home and business telephone number;

(3) his or her present employer and position;

(4) his or her field of specialty or expertise, if any; and

(5) the nature of his or her knowledge or information.

(b) if that person is an entity other than an individual:

(1) its address and telephone number; and

(2) the nature of any knowledge ascribed to it.

2. Whenever there is a request to identify a document, state the following:

(a) Describe the nature of the document (see definition of document, below);

(b) Provide the full name of its author, where known, its addressee(s) or recipient(s); the date of the document, and a description of the subject matter of the document;

(c) If the document relied upon is officially and publicly recorded, please provide the book, volume, and page number, and the county or other political subdivision where the same is recorded.



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1 working papers; copies or reproductions of any of the foregoing;  
2 and any other written, recorded, transcribed, punched, taped,  
3 filmed or graphic matter of whatever description and however  
4 produced or reproduced to which Defendant has or had access.

5 4. In all cases where original and/or nonidentical  
6 copies are not available, "documents" also means identical copies  
7 of original documents and copies of nonidentical copies. For  
8 purposes of this definition, the term "drafts" means any earlier,  
9 preliminary, preparatory, or tentative version of all or part of  
10 a document, whether or not such draft was superseded by a later  
11 draft and whether or not the terms of the draft are the same as  
12 or different from the terms of the final document.

13 5. "And" as well as "or" shall be construed either  
14 disjunctively or conjunctively as necessary to bring within the  
15 scope of the specification all responses that might otherwise be  
16 construed to be outside its scope.

17 6. "Persons" and "personnel" mean any person,  
18 individual, partnership, firm, association, personal corporation,  
19 corporation or other business, legal, or governmental entity.

20  
21 REQUEST FOR ADMISSIONS AND DOCUMENTS

22 Defendant Bingham ("Defendant") is requested to admit  
23 that: —



1           1. Defendant is an owner or operator of the Arrcom  
2 facility within the meaning of 40 C.F.R. § 260.10.

3           2. Defendant was represented by attorney Stephen  
4 Navaretta ("Navaretta") in the EPA administrative enforcement  
5 matter captioned In The Matter of Arrcom, Incorporated, et al.  
6 (EPA Docket No. X-83-04-02-3008).

7           3. Navaretta was acting within the scope of his  
8 employment during his representation of Defendant.

9           4. The professional legal relationship between Navaretta  
10 and Defendant has not terminated.

11           5. In the course of his representation of Defendant,  
12 documents were routinely prepared by Navaretta.

13           6. Documents number 2, 4, 5, 7, 9, and 11 are such  
14 documents.

15           7. During the course of his representation of Defendant,  
16 Navaretta routinely received documents, including letters, from  
17 EPA.

18           8. Documents numbered 3, 6, 8, and 10 are such  
19 documents.

20           9. Documents numbered 2, 4, 5, 7, 9, and 11 were prepared  
21 after consultation with Defendant.

22           10. Documents numbered 2, 4, 5, 7, 9, and 11 were mailed  
23 after Defendant concurred with the assertions contained therein.



1 11. Copies of documents numbered 3, 6, 8, and 10 were  
2 provided to Defendant at or about the time they were mailed or  
3 received by Navaretta.

4 12. Prior to the administrative hearing in the EPA  
5 administrative enforcement matter referred to in Admission 2  
6 above, Navaretta, as Defendant's legal representative, negotiated  
7 an Agreed Order in full settlement of the claims set forth in  
8 EPA's Complaint.

9 13. Document number 1 is the Agreed Order.

10 14. Defendant reviewed the Agreed Order.

11 15. Defendant authorized his attorney, as his legal  
12 representative, to execute the Agreed Order.

13 16. You are requested to produce for inspection and copying  
14 any and all records reflecting valuation and assessment of real  
15 property taxes of any and all real property owned or controlled  
16 by you.

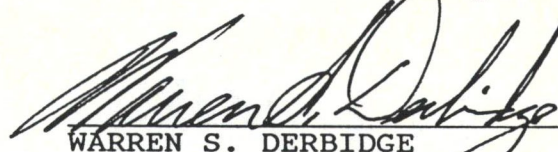
17 DATED this \_\_\_\_\_ day of April, 1990.

18 ROGER J. MARZULLA  
19 Assistant Attorney General  
Land & Natural Resources Division

20 ROBERT FOSTER  
21 Attorney  
22 Environmental Enforcement Section  
23 P.O. Box 7611  
Ben Franklin Station  
Department of Justice  
Washington, D.C. 20044  
(202) 633-4592



MAURICE O. ELLSWORTH  
United States Attorney



WARREN S. DERBIDGE  
Assistant United States Attorney  
District of Idaho  
United States Attorney's Office  
Room 328, Federal Building, Box 037  
550 West Fort Street  
Boise, Idaho 83724  
(208) 334-1211

Of Counsel

MONICA KIRK  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, Washington 98101  
(206) 442-1505

HELEN KENNEDY  
Office of Enforcement and Compliance  
Monitoring  
U.S. Environmental Protection Agency  
401 "M" Street, S.W.  
Washington, D.C. 20460  
(202) 475-8865



BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
EPA REGION 10, 1200 SIXTH AVENUE.  
SEATTLE, WASHINGTON 98101

In The Matter of:

Arrcom, Incorporated,  
Drexler Enterprises, Inc.,  
et. alia,

Respondents.

PERMIT NO. ID 0008000961

NO. X83-04-01-3008 &  
83-04-02-3008

AGREED ORDER FOR PAYMENT OF  
CIVIL PENALTIES  
RE RESPONDENT WARREN BINGHAM

1. This proceeding for the assessment of civil penalties was commenced by the filing and issuance of a Complaint herein, X83-04-02-3008, against Respondent Warren Bingham and others pursuant to Section 3008 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6928.

2. The signatories hereto, parties herein, settle and resolve the claims set forth in the Complaint by the entry of this Order, and the said parties stipulate and agree (by their signatures below) this Order may be entered without further notice or proceedings herein.



FINDINGS OF FACT

1. A facility consisting of several storage tanks, oil reprocessing equipment, and two buildings exists on a site located near Rathdrum, Idaho, five (5) miles east of the Washington-Idaho stateline on Idaho state Highway 53 (fully described in Attachment 3) (hereinafter "the Rathdrum facility").

2. The Rathdrum facility was operated from at least January 1, 1980 for the storage, treatment and disposal of used oil, spent solvents, and chemical substances such as toluene and ethylbenzene.

3. The Rathdrum facility was operated by respondents Arrcom, Incorporated and Drexler Enterprises, Incorporated, and George W. Drexler, William Pickett, and Thomas Drexler, between at least January 1, 1980, and January 1, 1982. On or around January 3, 1982, the Rathdrum ceased operation as an active, processing facility.

4. Respondent Warren Bingham purchased the Rathdrum facility on January 1, 1980, thereafter owned and possessed the facility, and thereafter leased the facility to respondent Arrcom, Inc. Respondent Bingham did not operate in any way the active facility between January 1, 1980 and January 1, 1982. Arrcom's lease for the facility was terminated on or around January 3, 1982.

5. A Part A RCRA permit application for interim status was submitted for the Rathdrum facility on November 19, 1980, and this application listed the owner of the Rathdrum facility as Arrcom, Inc.



1  
2 6. Interim status for the treatment and storage of  
3 hazardous wastes with ignitable characteristics at the Rathdrum  
4 facility was recognized by the Environmental Protection Agency  
5 (EPA) on August 11, 1981. No interim status was recognized for the  
6 handling of any other hazardous wastes, or for the disposal of  
7 ignitable characteristic hazardous waste.

8  
9 7. During the operation of the Rathdrum facility, used  
10 oil with ignitable characteristics and other chemical substances  
11 such as toluene and ethylbenzene were released into the environment  
12 at the facility through the dumping and/or spilling of used oil,  
13 spent solvents, and other chemical substances such as ethylbenzene  
14 onto the ground.

15 8. During the operation of the Rathdrum facility, no  
16 security fence was placed around the facility, nor were any other  
17 devices implemented to prevent the unknowing entry of persons or  
18 livestock on the facility.

19  
20 9. During the operation of the Rathdrum facility, no  
21 efforts were made to minimize the possibility of any release of  
22 hazardous wastes.

23 10. During the operation of the Rathdrum facility, no  
24 external communication device capable of summoning emergency assist-  
25 ance was kept at the facility.

26  
27 11. During the operation of the Rathdrum facility, no



1 written waste analysis plan was developed or utilized at the facility.

2 12. During the operation of the Rathdrum facility, no  
3 written inspection schedule for equipment and storage units, or  
4 hazardous wastes was developed or maintained at the facility.  
5

6 13. During the operation of the Rathdrum facility, no  
7 attempts to make contingency arrangements with local authorities  
8 were made.

9 14. During the operation of the Rathdrum facility, no  
10 manifest records or operating records were maintained at the facility.  
11

12 15. During the operation of the Rathdrum facility, no  
13 closure plan was developed or submitted for the facility.  
14

15 16. After January 1, 1982, no closure plan was submitted  
16 to EPA, or implemented for the Rathdrum facility, nor was the  
17 facility actively operated pursuant to applicable RCRA regulations.

18 17. In September, 1983, EPA undertook a cleanup effort  
19 at the site, which removed most used oil, spent solvents, and other  
20 chemical substances from the Rathdrum facility.  
21

22 18. At all times relevant herein, Respondent Bingham has  
23 cooperated with EPA in granting access to the Rathdrum site.  
24

#### 25 CONCLUSIONS OF LAW

26 1. From at least January 1, 1980 to September 1984,  
27 the Rathdrum facility was an existing hazardous waste management  
28 AGREED PENALTY ORDER - Page 4 of 10



1  
2 facility for the storage, treatment and disposal of hazardous  
3 waste, pursuant to 40 CFR § 260.10.

4 2. The Part A permit application submitted for the  
5 Rathdrum facility was submitted without a proper signatory for the  
6 owner, in violation of 40 CFR § 270.10(b), formerly 40 CFR § 122.4(b)

7 3. The Rathdrum facility was used for the disposal of  
8 hazardous wastes without a valid permit between January 1, 1980 and  
9 September 1983, in violation of 40 CFR 270.1(b) and section 3005  
10 of RCRA, 42 U.S.C. § 6925.

11 4. No efforts were made at the Rathdrum facility to  
12 minimize the possibility of unauthorized entry during the operation  
13 of the facility, in violation of 40 CFR § 265.14.

14 5. Inadequate efforts to minimize the possibility of  
15 any release of hazardous waste at the facility were made at the  
16 Rathdrum facility, in violation of 40 CFR § 265.31.

17 6. No external communication device capable of summoning  
18 emergency assistance was provided at the facility, in violation of  
19 40 CFR § 265.32.

20 7. No written waste analysis plan was developed or  
21 utilized at the facility or elsewhere, in violation of 40 CFR  
22 § 265.13(b).

23 8. No written inspection schedule was maintained at the  
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facility or elsewhere, in violation of 40 CFR § 265.13(b)(1).

9. No written training schedule or records of training were developed or maintained at or for the Rathdrum facility or elsewhere, in violation of 40 CFR § 265.16.

10. No attempts were made to make emergency contingency arrangements with local authorities near the Rathdrum facility, in violation of 40 CFR § 265.37.

11. No efforts were made to develop a contingency plan for the Rathdrum facility, in violation of 40 CFR § 265.51(a).

12. No manifest records were retained or kept at the Rathdrum facility, in violation of 40 CFR § 265.71.

13. No operating records were maintained or kept at the Rathdrum facility, in violation of 40 CFR § 265.71.

14. No closure plan was developed, submitted or kept at the Rathdrum facility, in violation of 40 CFR § 265.112.

## ORDER

Accordingly, it is hereby ORDERED AND ADJUDGED as follows:

1. The Respondent Warren Bingham shall pay to EPA the following amounts as civil penalties which are hereby assessed and imposed against the said Respondent:

A. Fifteen thousand dollars (\$15,000.00).



1           2.    The total of the foregoing imposed penalties is  
2 \$15,000.00, which said amount shall bear no interest from the  
3 date hereof.

4           3.    The payment of these imposed penalties is hereby  
5 suspended and deferred to July 30, 1986, at which time they shall  
6 be due and payable together with all interest accrued thereon  
7 without further proceedings, or notice, or Order herein EXCEPT as  
8 otherwise provided in paragraph 4.

9           4.    The suspended and deferred payment portion of the  
10 penalties imposed above shall be wholly excused automatically  
11 on the said date together with all interest accrued  
12 thereon without further proceedings herein if the affirmative  
13 conditions or events specified in Attachment 1 do occur on time,  
14 and if none of the negative conditions or events specified in  
15 Attachment 2 occurs prior to the date specified in paragraph 3.

16           5.    The suspended and deferred payment portion of the  
17 penalties imposed above together with all interest accrued thereon  
18 shall become immediately due and payable at an earlier date, namely,  
19 upon the non-occurrence of any of the required conditions or events  
20 specified in Attachment 1, or upon the occurrence of any one of the  
21 negative conditions or events specified in the Attachment 2.  
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1           6.    The Respondent shall cause to be filed herein  
2 affidavits which verify (on the basis of first hand knowledge of an  
3 appropriate individual) the extent to which (if at all) the conditions  
4 specified hereinabove have or have not been met or fulfilled as of  
5 the date of such affidavit, as follows:

6           A.    Whenever a negative condition listed in Attachment  
7 2 occurs, an affidavit to that effect shall be promptly filed.

8           B.    At least two business days prior to July 30,  
9 1986, affidavit(s) shall be filed addressing each condition specified  
10 in Attachments 1 and 2 (with the result that the payment of the  
11 penalties remains deferred, or else the penalties become  
12 payable, together with interest thereon as provided hereinabove).

13           7.    By deferring payment of penalties adjudged herein,  
14 the burden of proving that payment of those penalties remains  
15 deferred and suspended is hereby placed upon Respondent Warren  
16 Bingham.

17  
18           8.    EPA shall file herein a total satisfaction of this  
19 Order if, as, and when any such total satisfaction occurs.

20           9.    By stipulation signed by them and filed herein,  
21 the parties hereto may change and extend any time period set forth  
22 in Attachment 1, or the end date of the Order as stated in paragraph  
23 3, above. Upon the filing of such a stipulation herein, the  
24 said changes are thereupon incorporated into this Order automatically,  
25 as part thereof.  
26  
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1           10. This Order, and any actions taken to satisfy this  
2 Order, or any conditions therein (whether such action is the payment  
3 of penalties or the completion or implementation of the closure  
4 plan) shall not operate to relieve Respondent Bingham from any  
5 further liability under the Resource Conservation and Recovery Act  
6 of 1976, or the Comprehensive Environmental Response, Compensation  
7 and Liability Act of 1980. If the deferred penalties described in  
8 paragraph 2 above become due and owing, and are paid by Respondent  
9 Bingham, Respondent Bingham may additionally be subject to imposi-  
10 tion of a civil penalty upon notice and hearing of not more than  
11 \$25,000 for each day any closure plan is not submitted, or any  
12 approved plan is not implemented, pursuant to 42 U.S.C. § 6928(c).  
13 Further liability may also include an additional administrative  
14 order for failure to submit a closure plan after termination of  
15 interim status at the Rathdrum facility, pursuant to 40 CFR §  
16 265.112(c)(1), proposing civil penalties and ordering the submission  
17 and implementation of a closure plan.  
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11. All written submissions under this Order shall be  
addressed to:

Kenneth Feigner, Waste Management Branch Chief  
EPA Region 10, M/S 533  
1200 Sixth Avenue  
Seattle, Washington 98101

IT IS SO ORDERED this 20<sup>th</sup> day of June, 1985.

*Verly Brown*  
EPA REGIONAL ADMINISTRATOR

Stipulated, Agreed, and  
Approved for Entry  
Waiving Notice:

*[Signature]*  
Respondent and/or  
Of Attorneys for Respondent

Presented by:

*[Signature]* 6/13/85  
Of Attorney for EPA



ATTACHMENT 1

Affirmative Conditions

1. Not later than 60 calendar days after the date of this Order (but excluding the date hereof), Respondent Warren Bingham will submit either:

a. a written closure plan to EPA Region 10 for the Rathdrum hazardous waste management facility pursuant to all applicable parts of 40 CFR Part 265.110 - 265.120, Subpart G (1984);

or

b. written evidence to EPA Region 10 that Respondent has used his best efforts to fulfill 1.a. above.

2. If Respondent Bingham does not submit a written closure plan under part 1.a. above, but does submit written evidence under part 1.b. above; Respondent Bingham shall, not later than 120 calendar days after the date of this Order (but excluding the date hereof), submit a written closure plan to EPA Region 10 for the Rathdrum hazardous waste management facility pursuant to all applicable parts of 40 CFR § 265.110 - 265.120, Subpart G (1984).

3. Respondent Bingham will comply fully with all provisions of 40 CFR § 265.112(d) regarding any EPA approval, modification, or disapproval of any closure plan Respondent Bingham submits.

4. Immediately upon approval or modification of the



closure plan by EPA Region 10, Respondent Bingham will complete implementation of the approved or modified written closure plan not later than 180 calendar days after the date of approval or modification (but excluding the date of approval or modification).

5. Respondent Bingham will submit to EPA Region 10 a certification of closure which complies with 40 CFR § 265.115, after implementation of the closure plan is complete for the Rathdrum hazardous waste management facility.



ATTACHMENT 2

Negative Conditions

1. The sale or transfer of any part of the Rathdrum facility without Respondent Bingham procuring the written promise of the prospective or immediate transferee (enforceable by EPA) to perform all decretal terms and provisions of this Order shall not occur any time before implementation of the closure plan described in Attachment 1 is complete.



ATTACHMENT 3

Description of the Facility

That portion of the Tracts 17 and 24, Plat No. 2, GREENACRES IRRIGATION DISTRICT, Kootenai County, Idaho, according to the plat thereof recorded in Book B of Plats at Page 51, records of Kootenai County, Idaho, described as follows:

COMMENCING at the Northeast corner of said Tract 24; thence, North 89°32'45" West along the North line of said Tract 24, 208.0 feet to the Southwest corner of land described in the deed to Sam Green and wife recorded October 26, 1961 in Book 187 of Deeds at Page 216; being the TRUE POINT OF BEGINNING; thence, South 10°26'45" East 241.15 feet to a point on the Northwesterly line of State Highway 53; thence, South 49°20' West along said Northwesterly line 209.0 feet to an intersection with the Easterly line of land described in the deed to Theodore Day and wife recorded June 2, 1978 in Book 291 of Deeds at Page 449; thence, North 4°24' West along said Easterly line, 408.0 feet to the most Southerly Southwest corner of land described in the deed to Theodore Day and wife recorded April 21, 1978 in Book 290 of Deeds at Page 484; thence, South 89°32'45" East along the South line of said Day land, 147.1 feet to a point on the West line of land described in said deed to Sam Green and wife above mentioned; thence, South 0°24' West along said West line, 31.5 feet to the TRUE POINT OF BEGINNING.



*Stephen Navaretta*  
*Attorney-At-Law*

*13th Floor Seattle Tower*  
*1218 Third Avenue*  
*Seattle, Washington 98101*

July 11, 1985

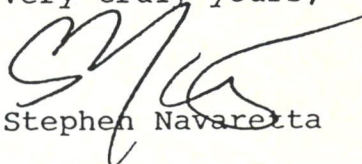
Henry Elsen, Esq.  
EPA Region 10  
1200 Sixth Ave.  
Seattle, WA 98101

Re: Bingham

Dear Henry:

Please review this agreement and confirm that the agreement does not satisfy the negative condition set forth as Attachment 2 the agreed order.

Very truly yours,



Stephen Navaretta

SN/mjn  
Enc.

Office of General Counsel

July 11, 1985



# AGREEMENT TO PURCHASE IMPROVED REAL AND PERSONAL PROPERTY

# I Parties

1.1 Seller is Warren Bingham residing at 4760 Mt. Aukum Road, Placerville, California.

1.2 Purchaser is Golconda Corporate Resources Incorporated, Suite A East 10905 Montgomery Avenue, Spokane, Washington 99206.

## II Property to be Purchased

2.1 The legal description of the real property to be purchased is attached hereto as Exhibit A.

2.2 The real property described in paragraph 2.1 will be sold together with all personalty located upon such real property on the date of this agreement, specifically including without limitation the tanks, equipment and tools formerly used to operate an oil processing plant on the site.

2.3 Purchaser agrees to purchase the real property and personal property "as-is" and expressly agrees that no representation has been made by Seller regarding the operability, usability or physical condition of the personal property to be purchased.

2.4 The property both real and personal described herein may also be referred to hereinafter as the "facility" or the "Rathdrum hazardous waste management facility."

### III Purchase Price

3.1 Seller agrees to pay Purchaser upon closing 60,000. shares of the common stock of Clark Medical-Technical, Inc. for the facility.

3.2 In further consideration for the purchase of the facility Purchaser agrees:

a. To submit no later than October 15, 1985, a written closure plan to the United States Environmental Protection Agency Region 10 (EPA Region 10) for the Rathdrum hazardous waste management facility pursuant to all applicable parts of 40 Code of Federal Regulations Part 265.110-265.120, Subpart G (1984). Said regulations are incorporated herein by this reference; and

b. To immediately upon approval or modification of the closure plan submitted pursuant to paragraph 2.2.a. by EPA Region 10 complete implementation of the approved or modified written closure plan not later than 180 days after the date of approval or modification, excluding the date of approval or modification; and

c. To submit to EPA Region 10 a certification of closure



which complies with 40 CFR s 265.115 after implementation of the closure plan is complete for the Rathdrum hazardous waste management facility.

3.3 In further consideration for the purchase of the facility Purchaser agrees to assume that certain real estate contract between Frank and Hilda Bundy as vendors and William Alan Pickett, Jean R. Pickett, Jimmie Alan Peterson and Betty A. Peterson as vendees recorded in the records of Kootenai County, Idaho under recording number 596582 and found at Book 70 Page 493 of said records and that certain real estate contract between William Alan Pickett as vendors and Arrcom, Inc. as vendees recorded in the records of Kootenai County under recording number 829998 and to pay and satisfy said contracts in accordance with its terms.

#### IV Conveyance

4.1 Seller will deliver to Purchaser a duly executed and acknowledged Quit Claim Deed assigning all of Sellers interest, including after acquired title in the real property of the facility. Said Quit Claim Deed will recite the assumptions of real estate contracts as agreed to and set forth in paragraph 3.3 of this agreement.

4.2 Seller will deliver to Purchaser a duly executed Bill of Sale for all the personal property located on the facility.

#### V Notification, Hold Harmless and Indemnification

5.1 Seller hereby notifies Purchaser that as owner of the Rathdrum hazardous waste management facility it has responsibilities and duties as set forth in 40 Code of Federal Regulations Part 264 and 265. Purchaser agrees to hold Seller harmless from, and indemnify him for, any costs, expenses, fines, penalties, fees or other such monetary expense without limitation as may arise from Purchaser's failure to comply with the requirements of paragraph 3.2 of this agreement, Purchaser's ownership and/or operation of the facility and any requirements imposed or ordered by EPA Region 10 or its equivalent additional to those set forth in paragraph 3.2 of this agreement.

#### VI Non-Merger

6.1 This agreement shall survive closing of this transaction and not merge in any conveyance issued in connection herewith.

#### VII Closing

7.1 The sale contemplated hereby shall close in the law office of Stephen Navaretta when the following documents are in possession of Stephen Navaretta:



(a) Stock certificates endorsed for transfer to Purchasers in the amount called for herein;

(b) A Corporate resolution of Purchaser authorizing the purchase;

(c) A copy of this agreement signed by each party, although separate copies may be signed;

(d) A signed Quit Claim Deed and Bill of Sale as specified herein;

(e) A written confirmation from EPA Region 10 that the sale contemplated by this agreement does not satisfy the negative condition found at Attachment 2 of Agreed Settlement Order dated June 20, 1985, in Case #83-04-02-3008.

7.2 Closing shall consist of Stephen Navaretta mailing the Quit Claim Deed and Bill of Sale to Purchaser at its address above described. Stephen Navaretta will have no responsibility for any filing or recording of these documents. Stephen Navaretta will notify the appropriate transfer agent to effect a transfer of ownership to seller of the stock certificates provided by Purchasers. Stephen Navaretta has not offered any opinion to Sellers on the value or alienability of the stock certificates recited as partial consideration for the sale herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

\_\_\_\_\_  
Warren Bingham

\_\_\_\_\_  
Golconda Corporate Resources, Inc.  
by William Campbell, authorized  
officer



( Description of the Facility

That portion of the Tracts 17 and 24, Plat No. 2, GREENACRES IRRIGATION DISTRICT, Kootenai County, Idaho, according to the plat thereof recorded in Book B of Plats at Page 51, records of Kootenai County, Idaho, described as follows:

COMMENCING at the Northeast corner of said Tract 24; thence, North  $89^{\circ}32'45''$  West along the North line of said Tract 24, 208.0 feet to the Southwest corner of land described in the deed to Sam Green and wife recorded October 26, 1961 in Book 187 of Deeds at Page 216; being the TRUE POINT OF BEGINNING; thence, South  $10^{\circ}26'45''$  East 241.15 feet to a point on the Northwesterly line of State Highway 53; thence, South  $49^{\circ}20'$  West along said Northwesterly line 209.0 feet to an intersection with the Easterly line of land described in the deed to Theodore Day and wife recorded June 2, 1978 in Book 291 of Deeds at Page 449; thence, North  $4^{\circ}24'$  West along said Easterly line, 408.0 feet to the most Southerly Southwest corner of land described in the deed to Theodore Day and wife recorded April 21, 1978 in Book 290 of Deeds at Page 484; thence, South  $89^{\circ}32'45''$  East along the South line of said Day land, 147.1 feet to a point on the West line of land described in said deed to Sam Green and wife above mentioned; thence, South  $0^{\circ}24'$  West along said West line, 31.5 feet to the TRUE POINT OF BEGINNING.

Exhibit A - Rathdrum Facility Sale





U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 SIXTH AVENUE  
SEATTLE, WASHINGTON 98101

AUG 7 1985

REPLY TO  
ATTN OF Mail Stop 613

Stephen Navaretta, Esq.  
13th Floor, Seattle Tower  
1218 Third Avenue  
Seattle, Washington 98101

Dear Mr. Navaretta:

I have reviewed the Agreement to Purchase Improved Real and Personal Property between Warren Bingham and Golconda Corporate Resources, Incorporated, regarding certain property known as the Rathdrum facility near Rathdrum, Idaho.

In that the Agreement constitutes a written promise by the transferee to perform all decretal terms and provisions of the Agreed Settlement Order, No. X83-04-02-3008, between the Environmental Protection Agency Region 10 and Warren Bingham (dated June 20, 1985), the Agreement does not satisfy the negative condition found at Attachment 2 of said Agreement, and does not violate the said Agreement.

Sincerely,

D. Henry Elsen  
Assistant Regional Counsel

#3



*Stephen Navaretta*  
*Attorney-At-Law*

*13th Floor Seattle Tower*  
*1218 Third Avenue*  
*Seattle, Washington 98101*

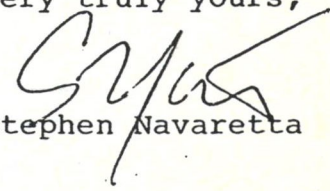
August 8, 1985

Henry Elsen, Esq.  
EPA Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

Dear Henry:

The offer contemplated by the sale agreement I sent you has been withdrawn. If you can, please indicate whether the concept utilized in the proposed agreement is suitable to avoid the negative condition if another offer is received.

Very truly yours,

  
Stephen Navaretta

SN/mjn

RECEIVED

AUG 9 1985

OFFICE OF REGIONAL COUNSEL  
EPA - REGION X

# 4



*Stephen Navaretta*  
*Attorney-At-Law*

*13th Floor Seattle Tower*  
*1218 Third Avenue*  
*Seattle, Washington 98101*

August 8, 1985

Henry Elsen, Esq.  
EPA Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

Dear Mr. Elsen:

Please consider this written evidence that Warren Bingham has exercised his best efforts to comply with affirmative condition 1.a of Attachment 1 to the Agreed Order Re: Respondent Bingham in EPA Cause No. X83-04-01-3008 and 83-04-02-3008.

Mr. Bingham has made substantial efforts to sell the property to an entity financially responsible and able to close the Rathdrum facility pursuant to the agreement. Unfortunately, a bona fide offer, which would have resolved the matter pending performance of the buyer, has been withdrawn.

While attempting to sell the property Mr. Bingham, through counsel, has made contact with environmental consultants including Dames and Moore and Envirosafe of Idaho and has obtained advice and input from these concerns including cost estimates and preliminary plans of action. Because of the offer received for the facility which proceeded to preparation of the final documents, the follow through with the consultants was delayed. We have only learned of the loss of the sale on August 7, 1985 and activation of consulting efforts cannot yield a closure plan by August 20, 1985. My client understands his responsibilities and will meet them.

Very truly yours,

  
Stephen Navaretta

SN/mjn

**RECEIVED**  
AUG 9 1985

OFFICE OF REGIONAL COUNSEL  
EPA - REGION X #5



August 14, 1985

Mail Stop 613

Stephen Navaretta, Esq.  
13th Floor, Seattle Tower  
1218 Third Avenue  
Seattle, Washington 98101

Dear Mr. Navaretta:

This letter is in reply to your letter of August 9, 1985.

The proposed form of sale for the ARRCOM/Rathdrum facility addresses the applicable provisions of the Agreed Final Order, No. 1083-04-02-3008, in an adequate manner such that the agreed order, including its negative condition, is not violated.

Sincerely,

D. Henry Elsen  
Assistant Regional Counsel

ELSEN:ps:8-14-85 (#2-25)

#6



*Stephen Navaretta*  
*Attorney-At-Law*

*13th Floor Seattle Tower*  
*1218 Third Avenue*  
*Seattle, Washington 98101*

October 7, 1985

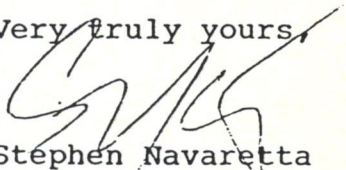
Henry Elsen, Esq.  
EPA Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

Dear Henry:

Mr. Bingham is experiencing great difficulty in financing development of a closure plan for Rathdrum. Further, the State of Idaho is seeking the sale of the property per the enclosed tax sale notice.

In view of the situation apparent from the foregoing an extension of time to submit a closure plan beyond the current deadline of October 20, 1985, is requested.

Very truly yours,

  
Stephen Navaretta

SN/mjn

Enc.

cc: Warren Bingham





U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 SIXTH AVENUE  
SEATTLE, WASHINGTON 98101

MAY 2 1986

REPLY TO  
ATTN OF:

M/S 613

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Warren Bingham  
4760 Mt. Aukum Road  
Placerville, California 95667

Dear Mr. Bingham:

On June 20, 1985, Agreed Order Regarding Penalties No. X83-04-02-3008 (pursuant to Section 3008 of RCRA, 42 U.S.C. §6912), was issued to you by the Environmental Protection Agency ("EPA"). That Order was the result of settlement negotiations between you and EPA prior to a hearing on the matter under case No. X83-04-02-3008, and bore your attorney's signature stipulating to its validity. The Order imposed penalties of \$15,000 for activities at your Rathdrum, Idaho, hazardous waste facility, but suspended and deferred those penalties on condition that you initiate closure activities at the site, as required under a Compliance Order issued to you on April 27, 1983.

You are now severely out of compliance with both the Agreed Order and the Compliance Order. Although the Agreed Order required you to submit a closure plan for the facility by October 20, 1985, to date no closure plan has been received. This is a violation of affirmative Condition #2 of the Agreed Order. In addition, EPA has been informed that the facility was sold at public auction to Kootenai County, State of Idaho. This is a violation of negative Condition #1 of the Agreed Order.

Therefore, pursuant to paragraph 5 of the Agreed Order, the \$15,000 penalty imposed under the Agreed Order is hereby due and payable. Payment, in the form of a certified check or money order, should be made to:

Environmental Protection Agency  
Region 10  
(Regional Hearing Clerk)  
P.O. Box 360903M  
Pittsburgh, Pennsylvania 15251



with a copy of the remittance to:

Regional Hearing Clerk  
EPA, Region 10  
1200 Sixth Avenue, M/S 613  
Seattle, Washington 98101

If payment is not received within thirty (30) days of the date of receipt of this letter, interest will accrue on this debt, pursuant to 31 U.S.C. ~~\$3162.~~ *missile*

Whether or not this penalty payment is received by EPA, you have other remaining legal obligations at the Rathdrum facility. As an owner of the facility (whether present or former), you are required to close the facility according to RCRA regulations. These obligations emanate from the Compliance Order, which was issued to you on April 27, 1983, and from RCRA interim status regulations, which require the implementation of a closure plan within 90 days after receiving the final volume of hazardous waste [40 C.F.R. §265.113(a)], or after interim status is terminated [40 C.F.R. §§265.112(c) and 265.113(a)]. Both of these events occurred some time ago. Therefore, the regulations require you to submit and implement a closure plan for the facility with all due speed.

Accordingly, within thirty (30) days of the date of receipt of this letter, you must submit a closure plan for the facility in full compliance with 40 C.F.R. Part 265, Subpart G. This plan should be submitted to:

Ken Feigner, Branch Chief  
Hazardous Waste Management, M/S 524  
Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, Washington 98101

After approval of the closure plan, pursuant to 40 C.F.R. §265.112, you are required to implement that plan within 180 days of approval.

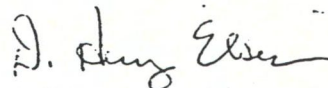
In addition, 40 C.F.R. §265.114 requires a fence at the site sufficient to prevent unauthorized entry at the facility. In order to address immediate hazards to the surrounding community, this fence should be installed. This activity must be commenced within thirty (30) days of receipt of this letter.



Any failure to pay the penalty or to submit and implement the closure plan and fence construction may result in referring this action to the Department of Justice for formal legal action. This action may be in the form of civil or criminal charges being filed against you in a court of law.

If you have any questions or comments on this matter, please contact me at (206) 442-1191. I look forward to a prompt and effective resolution of this matter. Environmental problems evident at the facility require such a timely response.

Sincerely,



D. Henry Elsen  
Assistant Regional Counsel

cc: County Treasurer, Kootenai County  
Stephen Navaretta, Attorney  
Jeffery Ring, AUSA-Idaho



*Stephen Navaretta*  
*Attorney-At-Law*

*13th Floor Seattle Tower*  
*1218 Third Avenue*  
*Seattle, Washington 98101*

May 9, 1986

RECEIVED  
MAY 12 1986

Henry Elsen, Esq.  
EPA Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

OFFICE OF REGIONAL COUNSEL  
EPA - REGION X

Re: Bingham

Dear Mr. Elsen:

I am in receipt of a copy of your letter to my clients dated May 2, 1986.

Your letter is in serious error and fails to accurately reflect actual events in the following particulars:

1. On October 7, 1986, a request for an extension of time to file the required closure plan was requested. A notice of the pending Idaho tax foreclosure was enclosed. No response to the request for extension was ever received.

2. Mr. Bingham had no responsibility or duty to pay the past due real estate taxes on the Rathdrum property. The record owner is specified on the notice of foreclosure as Mr. Frank Bundy who, in fact, is the fee owner of the property.

3. The tax foreclosure alluded to is not a "sale or transfer" within the contemplation of negative condition 1 of the penalty order.

4. Mr. Bingham has no present right, interest or title in the Rathdrum property due to the tax foreclosure. Upon the tax foreclosure caused by Mr. Bundy's inability or unwillingness to cure the existing tax default performance by Mr. Bingham was rendered impossible and was thus, under law, excused.

In summary, based upon the delay of EPA in responding to a timely request for extension and the intervening impossibility of performance and frustration of purpose precipitated by the tax foreclosure it is disputed that the penalty demanded in your letter is due.

#9



Henry Elsen, Esq.  
May 9, 1986  
Page Two

Additionally, it is my understanding that Kootenai County foreclosed Mr. Bingham's interest in the property with complete notice of the duties of ownership under RCRA. As such, even though no notice is required, Kootenai County has acquired duties of compliance and closure fully enforceable by EPA.

I suggest that a meeting be scheduled to discuss the terms upon which Mr. Bingham's connection with this mater can be terminated and the owners of the property can effect closure.

Very truly yours,



Stephen Navaretta

SN/mjn



July 17, 1986

M/S 613

Stephen Navaretta, Attorney  
13th Floor--Seattle Tower  
1218 Third Avenue  
Seattle, Washington 98101

Re: ARRCOM Site - Rathdrum, Idaho

Dear Mr. Navaretta:

This letter addresses your letter of May 9, 1986, and subsequent telephone conversations.

The Environmental Protection Agency rejects your explanation for noncompliance by Mr. Bingham with Consent Order No. X83-04-02-3008.

First, your request for an extension of time, dated October 7, 1985, was never granted in writing, as is required in the Consent Order. Telephone conversations between you and EPA personnel shortly after that request was received by EPA indicated you had not begun to prepare compliance plans for the ARRCOM facility. Because of that, EPA saw no basis to grant an extension and did not do so. We believe this was clear to you at the time of the telephone conversations. Consequently, the order deadlines stood and stand as Mr. Bingham's obligations under the agreement.

Second, claims of impossibility because of the recent tax sale are not valid. The County of Kootenai, the current holder of title at the site, does not object to granting access to the site to your client for closure activities. The tax foreclosure does not make Mr. Bingham's performance of the consent agreement impossible.

In short, there is no valid reason for Mr. Bingham's noncompliance with the negotiated consent agreement. By the terms of that agreement, Mr. Bingham now owes the government fifteen thousand dollars. In addition, Mr. Bingham continues to have a duty to close the ARRCOM-Rathdrum facility, pursuant to applicable laws and regulations.

In our telephone conversation, you suggested a meeting between Mr. Bingham and EPA, possibly involving Kootenai County

#10



representatives. In view of Mr. Bingham's past misuse of negotiated settlements, EPA declines to have such a meeting until it receives valid closure plans for the site from Mr. Bingham. No decision on the potential liability of the county at the site has been made at this time.

I can be reached at (206) 442-1191.

Sincerely,

D. Henry Elsen  
Assistant Regional Counsel

ELSEN:ps:7-15-86 (AR #1-32)

MEAD

RICE

FEIGNER



*Stephen Navaretta*  
*Attorney-At-Law*

*13th Floor Seattle Tower*  
*1218 Third Avenue*  
*Seattle, Washington 98101*

July 23, 1986

**RECEIVED**

JUL 31 1986

OFFICE OF REGIONAL COUNSEL  
EPA - REGION X

Henry Elsen, Esq.  
U.S.E.P.A.  
Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

Re: ARRCOM Site-Rathdrum, Idaho

Thank you for your letter of July 17, 1986.

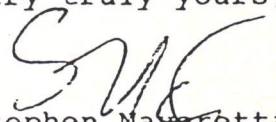
In response to your characterizations of the preceding events I must correct your misapprehension of the facts. The only phone call I received in response to my letter of October 7, 1985, was a general inquiry on the status of the closure plan and an assurance that a response would be issued. As we know no direct response to the extension request has ever been issued.

I am forwarding your letter to Mr. Bingham and will consult with him once he has a chance to review it. I am presently relocating my practice and will be unable to respond further until shortly after August 4, 1986.

My new address as of August 4, 1986 is:

1726 C Okeechobee Road--Suite 105  
Fort Pierce, FL 33450

Very truly yours,

  
Stephen Navaretta

SN/mjn

#11